IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH JAIPUR.

J U D G M E N T

D.B. CIVIL SPECIAL APPEAL (WRIT) NO.**859/2007.**
In
S.B. CIVIL WRIT PETITION NO.8453/2006.

Paras Ram
Vs.
The Excise Commissioner & Ors.

Date of Judgment:- **August 6, 2007.**

QUORUM
HON'BLE THE ACTING CHIEF JUSTICE MR.J.M. PANCHAL
HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Mr. Mahendra Singh for the appellant.

****

BY THE COURT (Per: Mr.J.M. Panchal, Actg.CJ.):

****

The instant appeal filed under Section 18 of the Rajasthan High Court Ordinance, 1949 is directed against the order dated November 1, 2006 rendered by the learned Single Judge in S.B. Civil Writ Petition No.8453/2006 by which the prayers made by the appellant (1) to restrain the respondents from recovering the amount mentioned in the demand notices dated July 21, 2001 and September 25, 2006 produced as Annexure-2 and Annexure-3, respectively, (2) to direct the respondents to release the property

from attachment and from process of auction sale and (3) to direct the respondents to refund the amount of Rs.56 lacs so far recovered with interest, are refused.

2) The Excise Commissioner, Rajasthan issued notice dated February 9, 1999 inviting tenders for grant of license for sale of liquor from the shops falling under different liquor groups for a period of two years i.e. 1999-2000 and 2000-01. The notice inviting tender did not elicit any offer. Therefore, on March 18, 1999, and March 27, 1999 fresh notices were issued inviting tenders for grant of license for sale of liquor. The petitioner applied for license and his offer was accepted on March 22, 1999. According to the petitioner, the Excise Commissioner during discussion pointed out that the contracts in respect of Bundi and Ramganjmandi groups would be granted if the petitioner purchased the Exclusive Privilege for the sale of liquor at Kota Group for an amount of minimum EPA. However, according to the petitioner, petitioner agreed to accept the said

stipulation subject to the condition that the amount would be liable to be reduced with reference to the maximum possible benefits in terms of reduction on the minimum EPA that might be granted by the Excise Commissioner in respect of another group. The case of the petitioner was that the Excise Commissioner accepted this condition in principle and agreed that any offer to be submitted by the appellant in respect of Kota Group would include the stipulation mentioned by the appellant. The case of the petitioner is that the Excise Commissioner issued acceptance-cum-sanctioned latter dated March 30, 1999 wherein no condition was stipulated as suggested by the appellant. The appellant had deposited a sum of Rs.1,67,00,307/- as earnest money by way of demand draft on March 30, 1999 and thereafter a further sum of Rs.5,62,46,200/- was deposited. The case of the appellant is that though he discharged all the obligations under the Contract, the respondents issued notice for recovery of the balance of licence fee amounting

to Rs.677.12 lacs vide notice dated February 25, 2000 and March 1, 2000. Initially, the appellant filed a civil suit challenging those notices but same was withdrawn. The appellant invoked extraordinary jurisdiction of this Court under Article 226 of the Constitution of India by filing D.B. (Civil) Writ Petition No.1088/2000 on March 16, 2000 and challenged the demand notices. The Division Bench of this Court vide judgment dated November 24, 2000 dismissed the petition filed by the appellant holding that reduction of EPA in case it was reduced for other contracts was not a condition of the contract. On the basis of finding recorded by the court in D.B. (Civil) Writ Petition No.1088/2000, the demand notices were issued which were impugned in the petition. The learned Single Judge has dismissed the petition vide order dated November 1, 2006 which has given rise to the instant appeal.

3) This Court has heard Mr.Mahendra Singh, learned counsel for the appellant and considered the documents forming part of the petition.

4) It may be mentioned that the judgment rendered in D.B. (Civil) Writ Petition No.1088/2000 and connected matters on November 24, 2000 is subject-matter of challenge before the Supreme Court in S.L.P. filed by the appellant. The grant of reliefs claimed in the petition would amount to sitting in appeal in over the decision rendered by the co-ordinate Bench of this Court in D.B. (Civil) Writ Petition No.1088/2000 and other connected matters. Such a course is not permissible at all. The relevant findings recorded by the Division Bench while disposing of D.B. (Civil) Writ Petition No.1088/2000 and other connected matters are as under:-

> "In these circumstances, it cannot be concluded that Ann.2, the letter dated 30.3.99 is absolute and unqualified acceptance of the condition that proportionate reduction in EPA will be given to the petitioner in case EPA is reduced in case of other contracts.
>
> Moreover, in paragraph 18 of the petition the petitioner has stated that before appending the signatures on the license the petitioner inserted a note in the presence of department officials that the terms of the contract would be

subject to the stipulation that was set out with respect to the reduction of EPA in the offer dated 30th March, 1999. The respondents, in reply to this paragraph have stated that the licence was issued to the petitioner without any condition. The condition mentioned by the petitioner in the licence cannot have any meaning as the same was put unilaterally. The respondent No.3 rejecting the said condition has not countersigned the license and has not issued the same to the petitioner and the petitioner himself continued the trade of liquor for the Kota Group as per the sanction letter dated 30.3.99.

In the written submissions on behalf of the petitioner in paragraph 3.13 it was contended that in the case of Parasram (Writ Petition No.1088/2000) the office of the District Excise Officer furnished to the said petitioner, three separate licenses in a printed format, duly signed on behalf of the department of Excise and calling upon the petitioner to sign the said licenses. It was further stated that the petitioner, accordingly signed the said license along with a note that the stipulation that formed part of the offer and provided for reduction of contract amount on occurrence of the contingency set out therein would apply. Each page of the said license contained an endorsement in the petitioner's hand to this effect. It was further stated that the Excise Department carried back the said licenses stating that they would be returned back to the petitioner after the same were signed by the higher authorities. However, the Excise Department, thereafter did not deliver back to the petitioner the said licenses. This makes it clear that the petitioner does not have a licence in

> his possession in which this condition appears. Obviously, the respondents had not agreed to the condition.
>
> Thus, in the facts and circumstances of the case, it has not been proved that reduction of the EPA in case it is reduced for other contracts was a condition of the contract. As it was not a condition of the contract, the very basis of the petition fails and no relief can be granted to the petitioner.
>
> In the aforesaid circumstances all the petitions fail and are hereby dismissed. The petitioners shall pay Rs.10,000/- in each case as costs to the respondents."

5) The above quoted observations indicate that a contract was entered into between the parties wherein the stipulation that there would be reduction of EPA in case it is reduced for other contracts, was not incorporated in the contract at all. The record would indicate that the appellant had continued to trade in liquor for the Kota Group as per the sanction letter dated March 30, 1999. As reduction of EPA in case it is reduced for other contracts was not a condition of the contract entered into between the parties, the respondents were justified in issuing demand notices which were challenged in the petition filed by the appellant.

6) On the facts and in the circumstances of the case, this Court is of the opinion that challenge to the demand notices was totally misconceived in view of the findings recorded by the Division Bench of this Court while disposing of D.B. (Civil) Writ Petition No.1088/2000 and other connected matters and, therefore, the learned Single Judge was justified in dismissing the petition filed by the appellant. The learned counsel for the appellant has failed to pursuade this Court to take a view different than the one taken by the learned Single Judge on the basis of material produced, and, therefore, the appeal which lacks merits, deserves to be dismissed.

For the foregoing reasons, the appeal fails and is summarily dismissed.

(MOHAMMAD RAFIQ), J. **(J.M. PANCHAL), Actg. CJ.**

anil